IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Raj Kumar & Anr. Vs. Purshotam Chhabra

S.B.CR. MISC. PETITION NO.288/2004
against the order dt. 20.1.2004 passed by learned Sessions Judge, Sri Ganganagar.

Date of Order : 6.1.2005

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Sandeep Shah, for the petitioners.
Mr. H.R.Chawla, for respondent.

BY THE COURT:-

Reportable

By this criminal misc. petition under section 482 Cr.P.C., the petitioners have challenged the order dt. 20.1.2004 passed by Sessions Judge, Sri Ganganagar (for short 'the revisional court') on a criminal revision filed by the petitioners against the order dt. 10.10.2003 passed by Judicial Magistrate, Sri Ganganagar (for short `the trial court') taking cognizance dismissing the revision petition.

Heard learned counsel for the parties. Perused the order of revisional court as well as of trial court taking cognizance of the offences.

The petitioners have availed one revision under

section 397 Cr.P.C. before the revisional court. The only contention raised by the petitioners before the revisional court was regarding the jurisdiction of the court. The revisional court came to the conclusion that the petitioners themselves appeared before the court of Judicial Magistrate, Sri Ganganagar and submitted to the jurisdiction and, therefore, it cannot be said that the Court of Judicial Magistrate, Sri Ganganagar had no jurisdiction. Even on perusal of the material available on record, it cannot be said that the Court of Judicial Magistrate, Sri Ganganagar has no jurisdiction. On the contrary, the court trying the complaint is well within the jurisdiction.

Learned counsel contended that the respondent gave a cheque to petitioner No.2 Shyam Sunder, which on presentation to the bank, was dishonoured and, therefore, a complaint under section 138 of the Negotiable Instrument Act, 1881 (for short 'the Act') was filed by petitioner No.2 against the respondent and the present case instituted by respondent for the offences under sections 420, 408, 468, 467, 471, 477 and 120-B I.P.C., is a counter blast to the complaint filed by petitioner No.2.

Counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court in Sunil Kumar

vs. Escorts Yamaha Motors Ltd. and Ors., **(1999) 8 SCC 468** and a decision of this Court in S.K.Gulati & Ors. vs. The State of Rajasthan & Anr., S.B.Cr.Misc. Petition No.177/2000 decided on 6.4.2004. In Sunil Kumar's case (supra), Hon'ble Supreme Court held that the necessary ingredients of the offence of cheating and criminal breach of trust have not been made out and on the other hand the attendant circumstances indicate that the FIR was lodged to pre-empt the filing of the criminal complaint against the informant under section 138 of the Negotiable Instrument Act. In that case, the High Court quashed the FIR. The Apex Court refused to interfere in the order quashing FIR.

In S.K.Gulati's case (supra) relying on the decision of Hon'ble Supreme Court in Sunil Kumar's case (supra), this Court observed that even taking the allegations made in the complaint on its face value, it does not satisfy the essential ingredients of offences punishable under sections 379 and 420 I.P.C. and, therefore, quashed the proceedings.

In the instant case, it appears that the complaint filed by respondent against the petitioners as also the complaint filed by petitioner No.2 against respondent under section 138 of the Act are almost

simultaneous. Petitioner No.2 filed a complaint before the trial court on 24.4.2003 and ultimately, the trial court took cognizance on 10.10.2003 against respondent, whereas, respondent lodged the case against the petitioners on 23.4.2004 i.e. a day prior and after investigation, the police filed the charge-sheet against the petitioners for the offences under sections 420, 408, 465, 467, 471, 477 and 120-B I.P.C. The trial court on perusal of the material placed before it, prima facie came to the conclusion that there is a ground to proceed against the petitioners for the offences noticed above and took the cognizance of offences.

In Jagdish Ram vs. State of Rajasthan, **AIR 2004 SC 1734**, the Apex Court held as under:

> "At this stage, the Magistrate had only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for

> supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons."

The petitioners have already availed the remedy by way of filing a revision petition before the learned Sessions Judge as envisaged under Section 397 Cr.P.C. Under the garb of a petition under Section 482 Cr.P.C., the petitioner seeks to avail a remedy of second revision. The second revision petition is barred by Section 397 (3) Cr.P.C.

The scope of sub-sec.(3) of Section 397 Cr.P.C. and inherent powers of the High Court under Section 482 Cr.P.C. came to be considered by the Three Judge Bench of the Hon'ble Supreme Court in Krishnan & Anr. Vs. Krishnaveni & Anr., **AIR 1997 SC 987** and the Hon'ble Supreme Court held as under:-

> "Ordinarily, when revision has been barred by Section 397(3) of the Code, a person accused/complainant cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397 (3) or Section 397(2) of the Code."

However, their Lordships of the Hon'ble Supreme

Court, in Krishnan's case (supra), observed that the prohibition under Section 397(3) of the Code is not applicable when State seeks revision under Section 401 Cr.P.C. and High Court can entertain it in case of grave miscarriage of justice or abuse of process of court or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction. The Apex Court further held that though the revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice. The Apex Court further held that the revisional power under Section 397(1) read with Section 401 of the Code may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings.

In the instant case, there is no miscarriage of justice, abuse of process of the Court, non-compliance of statutory procedure or failure of justice which may require interference by this Court for exercising inherent powers and supervisory powers under Sections

482 of the Code.

In S.K.Gulati's case (supra), a cheque was issued in 1992, which was bounced and a complaint under section 138 of the Act was filed against the person, who issued cheque. Summons were served as back as in the year 1995 and on 9.1.1996, a complaint was filed stating therein that cheque in question was issued at the time of shooting of feature film "NAIN MILE CHAIN KAHAN". The theft of cheque took place during the shooting of that feature film. In that case, the alleged cheque said to have been stolen in the year 1992 and the report of theft was lodged on 9.1.1996 i.e. after about 4 years, which was not believed by the Court and the Court quashed the proceedings.

In Sushil Kumar's case (supra), the cheques given by the appellant to the respondents were bounced. Pre-empting filing of complaint under sectoin 138 of the Act against him, the appellant filed an FIR under sections 420, 406 and 468 I.P.C. alleging therein that the respondents hatched a conspiracy and committed criminal breach of trust by presenting for encashment the blank cheques signed by the appellants for the purpose other than for which the cheques had been given to the respondents. Apart from the fact that the said allegations did not make out the offence of cheating or

criminal breach of trust, attendant circumstances indicated that the FIR was lodged to pre-empt filing of complaint under section 138 of the Act, the Apex Court held that the High Court was well within its jurisdiction to quash the FIR as amounting to abuse of the process of Court.

In the instant case, the events as noticed above show that before petitioner No.2 could file the complaint against respondent, the respondent had already filed a report against the petitioners for the offences under Sections 420, 408, 467, 471, 477 and 120-B, IPC. In the circumstances, the decisions relied on by the learned counsel for petitioners, which turns on their own facts and, therefore, do not help the petitioners. More so, no such contentions were raised by the petitioners before the revisional court.

In view of the aforesaid discussion, no case warranting interference under section 482 Cr.P.C. is made out. The petition lacks merit and it is dismissed accordingly.

(H.R.PANWAR),J.

m.asif/-